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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1587 of 2007

Smt. Malan Anantrao Bhintade ..Petitioner

Vs.

The State of Maharashatra & Ors...Respondents

Mr. Y.S. Jahagirdar, Senior Advocate with Mr. Hitesh Jain with Mr. Subhash Jadhav i/b. ALMT Legal for the Petitioner

Mr. P.P. Kakade AGP for Respondent No.1 and 2.

Mr. R.G. Ketkar,for Respondent No.3.

Mr. Amol A. Deshpande i/b. P.B. Shaligram for respondent No.5.

CORAM : F.I. REBELLO & R.M.SAVANT, JJ.
DATED : 9TH MARCH, 2007.

P.C.

. Rule. Heard forthwith.

2. The petitioner is aggrieved by the order dated 3rd March, 2007 whereby the petitioner's claim as belonging to Kunbi, a notified O.B.C. in the State of Maharashtra has been rejected. Pursuant to the caste certificate being forwarded the Committee called for the report from the Vigilance Cell. The Vigilance Cell submitted their report. The report prima facie will indicate that the petitioner belongs to Kunbi O.B.C.

2. Before the Committee the documentary evidence was produced from the paternal side. Some of the documents are

of the year 1922 to show that the petitioner belongs to Kunbi O.B.C. The document in so far as the petitioner's father is concerned show Marathi and not Maratha. The Respondent Nos. 4 and 5 before us had intervened before the Committee and had brought documentary evidence. According to them that evidence was not available to the petitioner herein nor does it appear to have been considered by the Committee itself. At the hearing on behalf of respondent Nos. 4 and 5 learned Counsel had drawn our attention to the judgment of the Division Bench of this Court in **Jagannath D. Hole vs. State of Maharashtra & Ors., 2006 (1) AIR Bom. R. 365.** In that judgment the Division Bench has noted that the expression Maratha as also Marathi. There is no finding recorded that the term Marathi is equivalent to the caste Maratha. This judgment was relied upon by the Committee to negate the claim of the petitioner herein.

3. The Committee is the first and last fact finding Committee. The only challenge available to a party is to challenge the same before this Court in the exercise of its extra ordinary jurisdiction. Considering the law laid down in **State of Maharashtra & Ors.** V**s.Ravi Prakash Babulalsing Parmar, 2007 (2) Mh. L.J.250** the party can also lead oral evidence. Under these circumstances when the Committee decides an issue it has to take into consideration all aspects of the matter both documentary as well as the report of the Vigilance Committee and as now noted in the Judgement of State of Maharashtra & Ors., (Supra) by the Supreme Court it is open to the parties also to lead oral evidence.

We are of the opinion that the Committee totally excluded the report of the Vigilance Cell. This would have important bearing considering that there was documentary evidence produced by the petitioner to show that the near blood relatives were shown as Kunbi in the birth register. It is true that there are some documents including the petitioner's caste certificate to show that she belongs to Maratha. The petitioner's father's birth certificate shows that he belongs to Marathi and not Maratha. It may be noted, that considering the social aspects many belong to the Kunbies O.B.C. in the State of Maharashtra to claim higher social status, identified themselves as Marathas. The Committee under these circumstances should have considered both the effect of the documentary evidence as well as report of the Vigilance Cell.

. In our opinion the Committee misdirected themselves in not considering the report of the Vigilance Cell and, therefore the order suffers from an error apparent on the face of the record.

. We may also note that the learned Counsel for the Respondent Nos. 4 and 5 before us has pointed out to us that the family tree produced by the petitioner itself is debatable. We do not propose to go into that issue. That issue can be gone into by the Committee. Considering that the respondent Nos. 4 and 5 had also filed a complaint, it will be open to the said Respondents to lead evidence limited to the extent of the caste of the petitioner. That

evidence can be considered by the Committee after giving an opportunity to the petitioner and thereafter to proceed according to law.

. In the light of that we are inclined to set aside the order of the Caste Scrutiny Committee and remand the matter to the Committee for fresh consideration.

4. Considering the controversy we direct the Committee to complete the entire enquiry and pass appropriate orders at any rate not later than twelve weeks from today. With the above observation petition stands disposed of. No order as to costs.

. All Authorities to act on a copy of this order duly authenticated by the Private Secretary of this Court.

(**F.I.REBELLO**, J)

(**R.M.SAVANT,J**.)